

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 5 OF 2004.

Comunidade of Kerim,
Kerim, Goa. Through its
Attorney Shri Manohar Dessai,
residing at Kerim, Goa.

.... Appellant.

Versus

1. Land Acquisition Officer,
Office of the Dy. Collector & S.D.O.,
Ponda, Goa.

2. Dy. Chief Executive Officer,
Industrial Development Corporation
(IDC), Panaji, Goa.

..... Respondents.

Shri R.G. Ramani, Advocate for the Appellant.

Shri M.S. Sonak with Shri P. Rao, Advocates for the Respondent No.2.

**CORAM: B. H. MARLAPALLE &
N. A. BRITTO, JJ.**

DATE: 21st December, 2004.

ORAL JUDGMENT: (Per Marlapalle, J.)

In this appeal filed under Section 54 of the Land Acquisition Act, 1894 (For short the Act) the award passed on 25.9.2003 by the learned IInd Additional District Judge, Panaji in Land Acquisition Case No.104/97 has been challenged and by the said Order the reference for enhancement made under S.18 of the Act by the appellant/claimant came to be rejected.

2. The Government of Goa sought to acquire total area of 10,11,000 sq.m. of land for the public purpose namely Industrial Estate/Nylon 66 Project of Kerim, from three different villages in Ponda Taluka. Notification under Section 4(1) of the Act was published in the Government Gazette on 9.3.1989 and the declaration under S.6 of the Act was also gazetted on 9.3.90 and it appears that finally the Government decided to acquire land only from two villages namely Kerim and Khandepar. The Land Acquisition Officer passed his award on 21.4.92. The appellant Comunidade owned land in different survey numbers of village Kerim and this appeal pertains to the land acquired from three different surveys namely No.154/1, 152 (part), and 139 totally admeasuring 3,31,1100 sq.m. The total area from the respective survey numbers acquired by the State is as under :-

Survey No. 152 (part) - 1,58,300 sq.m.

Survey No. 154/1 - 52,900 sq.m.

Survey No. 139 - 1,05,250 sq.m.

However, from the said land, 500 sq.m. from survey No.154/1 was paddy land and remaining was barad land. Similarly, from survey No.152 (part) 5300 sq.m. was paddy land and from survey No.139, land upto 8850 sq.m. was also paddy land. The Land Acquisition Officer awarded compensation at the rate of Rs.4/- per sq.m. for the barad land and Rs.8/- per sq.m. for paddy land. The claimant-Comunidade being unhappy with the rate of compensation awarded by the Land Acquisition Officer applied for enhancement under S.18 of the Act and claimed compensation at the rate of Rs.50/- per sq.m.

3. In support of its claim for enhancement, the claimant had examined

AW.1 Manohar Dessai, Attorney of the Comunidade, A.W.2 Ramchandra Vaidya who was at the relevant time President of the Comunidade, A.W.3 Subassschandra Bhobe an expert on valuation of the land and A.W.4 Anil Arjun Salgaonkar. The respondent No.2 had filed written statement and opposed the reference, but it preferred not to lead any oral or documentary evidence. The respondent No.1 Land Acquisition Officer had proceeded to acquire the land for the respondent No.2 i.e. Goa Industrial Development Corporation which is a State undertaking.

4. A.W.1 Manohar Dessai in his depositions before the Reference Court stated that the subject land touched the tarred road and the schools and market were located within 2 kms. from the acquired land. Water was available in the acquired land besides the tap water facility located within the distance of 2kms., electricity facility was also available within the road abutting the acquired land and the land was suitable for construction. He relied upon two sale instances which he claimed to be comparable. The first sale instance at Exh.35 pertained to the land admeasuring 14,675 sq.m. and located in survey No.201/2 of village Khandepar and the registered sale deed is dated 4.3.1986. The second sale instance of registered sale deed dated 4.2.87 and marked at Exh.36 was in respect of the land admeasuring 2,494.75 sq.m. from village Priol. The sale value of the first sale instance dated 4.3.86 came to be Rs.10/- per sq.m. while in the second sale instance it came to Rs.100/- per sq.m. He further stated that both the villages were adjacent to village Kerim and the land covered by Exh.35 was also an agricultural land. The land from Khandepar village was at a distance of 3 to 4 kms., whereas the land in Prio village was at a

distance of 2-1/2 to 3 kms. In his cross-examination he admitted that he was not the Attorney of the Comunidade when the land was acquired. He claimed that all the land under acquisition was in possession of the claimant, but one Mr. Shikerkar had claimed tenancy over the land in survey No.139. Whereas in respect of the land from survey No.154/1 and 152 (part) no one had claimed any such tenancy. He also admitted that the land covered by sale instance at Exh.36 was a developed land and divided into plots.

5. A.W.2 Ramchandra Vaidya stated that he had accompanied A.W.3 S.N. Bhobe the valuer in 1992 to visit the subject land. The nature of the acquired land was rocky and almost levelled and was bounded on one side by public road going from Kerim to Savoi-Verem and it was at a distance of 2 kms. away from the centre of village Kerim. The acquired land was suitable only for construction and located about 8 to 9 kms. from Ponda town. He admitted in cross-examination that about 10,000 sq.m. of land was cultivated by tenants. The pending proceedings before the Mamlatdar initiated by Shikerkar are pending. The valuation work was entrusted to Shri S.N. Bhobe somewhere in February/March 1992.

6. A.W.3 Shubash Bhobe an Architect by qualification is a registered valuer. As per him the acquired land was partly barad and mostly levelled. Another road going from Kerim centre to Kundai via Kunkolim is about ½ km. away from the acquired land. There is a cashew factory at Apewal which is on Curti-Prio road at a distance of 2-1/2 kms. He had considered all the factors and worked out the market value of the subject land at Rs.43.75 as on 8.3.99. In his cross-examination he admitted that only small portion of the land touched the road and not the whole stretch of land. He agreed that the tenancy issue in

respect of the agricultural land is a restriction which reduces the market value of the land under acquisition.

7. A.W.4 Anil Salgaonkar filed affidavit in evidence at Exh.30 and was not subjected to cross-examination by the respondents. In the impugned award the Reference Court did not accept in the absence of survey plan that the subject land was touching, on one side, a public road. The evidence of A.W.3 was discarded because he had visited the land in 1992. It also held that the land occupied by the tenants would suffer further reduction in the market value as it could not be sold like a freehold land is sold in the market. The Trial Court also discarded the sale instance at Exh.35 on the ground that the land was located at a distance of 3-1/2 to 4 kms. From the acquired land and house was constructed in the said land. This reasoning given by the Trial Court does not impress us. However, the land covered by the sale instance at Exh.35 was a freehold land without any restrictions and it would certainly have more value than the subject land. The construction of the house appears to be a subsequent event. The market value of this land as on 4.3.86 was Rs.10/- per sq.m. and if 10% increase is considered the market value in March, 1989 would go to Rs.13/- per sq.m. There is no dispute that Khandepar is neighbouring village of Kerim and land from both the villages was sought to be acquired by common notification. We agree with the Reference Court that the sale instance at Exh.36 was not comparable as it was a developed plot and the area covered by the sale deed was a small plot of 2494.75 sq.m. There was no other evidence before the Reference Court and therefore it held that the claimant/Comunidade had failed to prove its case that the market value of the land under acquisition was Rs.50/- per sq.m.

8. Mr. Ramani, the learned counsel for the appellant, submitted that the sale instance at Exh.35 ought to have been relied by the Reference Court and the reasoning given by it in discarding the same is not sound. He also submitted that the land under acquisition had future potential for development though it was Comunidade land. He did not agree that the land belonging to the Comunidade suffered from restrictions and therefore it hardly had any building potential.

9. At this stage we must refer to the arguments advanced by Mr. Sonak, the learned counsel for respondent No.2. While supporting the impugned award, Mr. Sonak placed reliance on our decision in First Appeal No. 218/2002 which came to be decided by us on 28.9.2004. The land under acquisition in the said case was admeasuring 3,13,630 sq.m. and it belonged to the Comunidade of Candolim. It was acquired by notification under S.4(1) published in the Official Gazette on 7.1.83 and the Land Acquisition Officer had passed the award on 21st March, 1986 by which he had fixed the market value of the land at Rs.10/- per sq.m. The Reference Court had rejected the claim for enhancement dated 24th February, 1990 and by our Judgment dated 28.9.04 we have confirmed the said award. We have held in the case of Comunidade of Candolim that the land belonging to the Comunidade is not a freehold land and can be sold only when in liquidation proceedings the assets are found to be inadequate. The land belonging to the Comunidade could not be utilised for a purpose which will enhance the market value of the restrictions imposed on such land under the Code of Comunidades. Its free use is not permissible. We

further noted that when the land suffered statutory restrictions the obvious consequences that follow would be on its market value and therefore such land could not be compared with other sale instances in respect of the freehold land.

10. There is no dispute that the land belonging to the Comunidade suffers from restrictions of building potential as it is not a freehold land and it may have some other restrictions as well. The land in F.A. No.218/02 had suffered additional restrictions. In the instant case in respect of the land in Survey No.139 is under the claim of tenancy and the remaining land did not have such claim pending before any authority.

11. Notwithstanding these restrictions, we are unable to convince ourselves that the market value of the subject land as awarded by the Land Acquisition Officer at the rate of Rs.4/- per sq.m. for the barad land and Rs.8/- for paddy land was adequate and it represented the correct market value as on 9.3.1989. The land covered by the sale instance at Exh.35 may not be a comparable sale instance but certainly it could provide some guidelines in fixing reasonable compensation rate for the subject land which was belonging to the Comunidade. If the compensation rate in respect of the land at Exh.35 worked out to Rs.13/- per sq.m. as in March, 1989, there could be further reduction and substantial one while considering the market value of the subject land. We have also noted that it was sought to be acquired for an Industrial Estate/Enterprise and therefore the total land would be the requirement of such an enterprise. The land was not being acquired for developing the housing colony or construction of office or residential buildings. As a Court of

First Appeal, we have noted that the market value of the land belonging to the Comunidade is certainly less than the market value of the land which is freehold. The land belonging to the Comunidade of Morombi was acquired by the State Government for construction of military quarters. The land admeasured 45,260 sq.m. and it was a rocky barren land which was kept by the Comunidade for grazing. There were no fruit trees on it. The Land Acquisition Officer like in the instant case had determined the compensation rate at Rs.4/- per sq.m. by his award dated 26.2.73. However, the formula that he followed has relevance for our considerations. The Land Acquisition Officer had noted that the market rate for the freehold land at the relevant time was higher than Rs.4/- per sq.m. and he held that while fixing the market value of the land belonging to the Comunidade there should be further reduction of 25% from the market value fetched by the freehold land. Thus if the market value of the freehold land was Rs.8/- per sq.m. similar land belonging to the Comunidade would be compensated at Rs.6/- per sq.m. Even in respect of the land covered by F.A. No.218/02 the rate awarded by the Land Acquisition Officer was Rs.10/- per sq.m. when the Notification under S.4(1) was published on 7.1.1983 i.e. about six years prior to the instant acquisition. If the freehold land in Khandepar village in March, 1989 had market value of Rs.13/- per sq.m. by following the same analogy as was adopted by the Land Acquisition Officer in the case of land belonging to the Comunidade of Morombi, in the instant case the market value would be more than Rs.9/- per sq.m. i.e. 75% on Rs.13/-.

12. We therefore do not hesitate in fixing the market value in the instant case at Rs.9.75 per sq.m. for the barad land and Rs.12/- per sq.m. in respect of the

paddy land.

13. However, there is a tenancy claim presently pending in respect of the land in Survey No. 139 and if the claim finally succeeds, this market value that we have fixed would not be applicable and the compensation granted by the Land Acquisition Officer would prevail. In respect of the land in Survey N.154//1 and 152 (part) there are no such claims pending and therefore the rate noted above deserves to be awarded in respect of the said land.

14. In the result, this appeal succeeds partly. The impugned award passed by the learned IInd Additional District Judge, Panaji is hereby quashed and set aside. We hold that the compensation in respect of the subject land shall be fixed at Rs.9.75 (Rupees nine and paise seventy five) per sq.m. for the barad land and Rs.12/- (Rupees twelve) per sq.m. for the paddy land. The enhancement in respect of the land in survey No.139 shall be subject to the final decision in the pending tenancy case and in case the tenancy claim is rejected, the same enhancement rate shall be applicable to the said land as well and in case the tenancy claim succeeds, the compensation rate awarded by the Land Acquisition Officer shall be payable. In addition, the claimant will be entitled for other statutory benefits of solatium and interest on the enhanced compensation.

B.H. MARLAPALLE, J.

sl.

N. A. BRITTO, J.

